Supreme Court, U.S.
F I L E D
SEP 19 1991
OFFICE OF THE CLERK

(2)

91-493

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

LEE H . RICE and GOLDIE E. RICE, PETITIONERS

v.

UNITED STATES OF AMERICA, RESPONDENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX

LEE H. RICE
GOLDIE E. RICE

P.O. Box 245
Oracle, Arizona 85623
Tel. (602) 896-2565

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F I L E D
APR 15 1991

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	) No. 90-16329
Plaintiff-Appellee,	) D.C. No. CV-2330-PHX-RG
v.	)
LEE H. RICE, and GOLDIE E. RICE,	) MEMORANDUM**
Defendants-Appellants.	)

Appeal from the United States District Court for the District of Arizona
Roger G. Strand, District Judge, Presiding

Submitted March 18, 1991**

BEFORE: NORRIS, BEEZER, and BRUNETTI, Circuit Judges

In 1988, the District Court of Arizona entered a judgment upholding a

decision of the Interior Board of Land Appeals, declaring defendants' ten unpatented mining claims to be invalid, directing the defendants to vacate the claims, and awarding damages to the United States. On appeal, this court affirmed the district court's finding as to the invalidity of the claims, but reversed and remanded the issue of damages. On remand, the district court recalculated damages and again entered judgment in favor of the United States. Defendants filed a timely appeal.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Circuit Rule 36-3.

**This panel unanimously finds this case suitable for decision without oral argument. Fed. R. App. P. 34(a); Circuit Rule 34-4.

F I L E D

JUL 09 1990

Richard H. Weare, Clerk
United States District Court
for the District of Arizona

By /s/
Deputy clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIV-84-2330-PHX-RGS
	)	
v.	)	
	)	O R D E R
LEE H. RICE and GOLDIE E. RICE,	)	
	)	
Defendants.	)	
	)	

Plaintiff's Motion for Entry of Amended Judgment After Remand having been presented, and the court having considered the Memorandum Decision of the United States Court of Appeals for the Ninth Circuit, and neither party having suggested that a trial is necessary in order to recalculate damages in

accordance with the decision of the appellate court, the court further having re-examined the pertinent exhibits submitted at trial upon the issue of damages which were introduced into this action November 9, 1987, and the court finding that no further evidence or argument is necessary in order to comply with the order of remand received from the appellate court,

IT IS ORDERED vacating the trial heretofore set for July 6, 1990, at 9:30 a.m..

IT IS FURTHER ORDERED that in accordance with the Plaintiff's Exhibit C, the Court finds and concludes the value of Rice's use and occupancy for residency on one of the unpatented mining claims from January 1, 1978 through 1986, including

interest compounded at the rate of seven percent per annum is the sum of $4,878.92 instead of the sum of $9,279.41 as was heretofore found by the court upon the original damage trial by the court. The court finds and concludes that defendants are liable to plaintiff in the amount of $7,091.15 which represents defendants' liability to plaintiff in the amount of $4,878.92 for the reasonable value of defendants' past occupancy and use of public lands as a residence, including prejudgment interest for the years 1978 through 1986, and defendants' liability to plaintiff in the amount of $2,212.23 for the reasonable cost of removal and restoration.

IT IS ORDERED that judgment be entered in favor of plaintiff United States of America and against defendants

Lee H. and Goldie E. Rice in the principle sum of $7,091.15 together with interest thereon at the legal rate from and after the original judgment herein, to wit, April 14, 1988, until paid, and plaintiff's taxable costs.

FURTHER ORDERED that the defendants shall vacate the subject land and shall remove all of their property located thereon within sixty (60) days after the filing of this order.

DATED this 3rd day of July, 1990.

/s/ Roger G. Strand
HONORABLE ROGER G. STRAND
U.S. DISTRICT COURT JUDGE

F I L E D

JUL 9 1990

Richard H. Weare, Clerk
United States District Court
For the District of Arizona
By /s/

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

LEE H. RICE and GOLDIE E. RICE,

Defendants.

JUDGMENT IN A CIVIL CASE

Case Number: CIV-84-2330 PHX-RGS

[ ] **Jury Verdict,** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

[x] **Decision by Court.** This action came to trial on hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is entered in favor of Plaintiff, United States of America, and against

Lee H. and Goldie E. Rice, in the principle sum of $7,091.15, together with interest thereon at the legal rate from and after the original judgment herein, to wit, April 14, 1988, until paid, and Plaintiff's taxable costs.

IT IS FURTHER ORDERED AND ADJUDGED that Defendants shall vacate the subject land and shall remove all of their property located thereon within sixty (60) days after the filing of this judgment.

July 9, 1990
Date

RICHARD H. WEARE, CLERK
Clerk

/s/ S. Dorfman
(By) Deputy Clerk

F I L E D
OCT 18 1990

CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 90-16329
Plaintiff-Appellant,	DC# CV-84-2330-PHX-RG
vs.	Arizona (Phoenix)
LEE H. RICE,	
Defendant-Appellant,	ORDER
and	
GOLDIE E. RICE,	
Defendant-Appellant.	

Before: HUG and SCHROEDER, Circuit Judges

Appellants have not demonstrated that they are financially unable to post a supersedeas bond. See Miami International Realty Co. v. Paynter, 807 F.2d 871, 873-74 (10th Cir. 1986). Their emergency motion for a stay pending

appeal without posting a supersedas bond is therefore denied.

The district court's order of September 17, 1990 is modified as follows: appellants shall vacate the subject land and remove all their property located thereon unless they file a supersedas bond in the amount of $7091.15 on or before November 1, 1990.

Upon posting of such bond, the government shall take all necessary steps to ensure that any lien it has placed upon appellants' property for the amount of any judgment in this action shall be lifted.

MoCal 10/18/90
1

NON-TRANSFERABLE
TIME CERTIFICATE OF DEPOSIT

Bank	office No.	Type	No. 3038436
01	107	010	

Customer No.	Effective Date
107722611	10 29 90

LEE H RICE OR GOLDIE E. RICE** ** ** **
HA ve DEPOSITED IN THIS BANK NOT SUBJECT TO CHECK
First
Interstate 7,091 dol's 15 cts DOLLARS
7,091.15** ** ** ** ** ** ** ** ** **PAYABLE
TO LEE H RICE OR GOLDIE E RICE
** ** ** ** ** ** ** ** ** ** ** ** ** ** **
IN CURRENT FUNDS ON MATURITY AS HEREAFTER SPECIFIED AND UPON PRESENTATION AND SURRENDER OF THIS CERTIFICATE PROPERLY ENDORSED SAID DEPOSITS EARN INTEREST AT THE RATE OF 6.60 PERCENT PER ANNUM FOR 1 YEAR TERM FROM THE DATE HEREOF UNTIL ULTIMATE MATURITY, SUCH INTEREST TO BE PAYABLE COMPOUND MONTHLY TO MATURITY**

First Interstate Bank of Arizona, H.A.

Customer Copy Authorized Signature

/s/ Ruebin A. Mumereford

"'3038436"' ':599918001':

DATE 10/29 1990 No. 0208

RECEIVED FROM LEE H RICE and GOLDIE E RICE

ADDRESS P.O. Box 245

Oracle, AZ 85623 DOLLARS $7,091.15

FOR Supersedeas Bond

CIV 84-2330-PHX-RGS

9th CCA Ord. 10/18/90

By /s/ G.S. Lenny

ACCOUNT	HOW PAID
Amt. of Account	Cash
Amt. Paid	Check
Balance Due	Money Order

JUDGMENT ON DECISION BY THE COURT

F I L E D

APR 14 1988

Richard H. Weare, Clerk
United States District Court
for the District of Arizona

By_____
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff,	) CIV-84-2330-PHX-RGS
vs.	) **JUDGMENT**
LEE H. RICE and GOLDIE E. RICE, Defendants.	)

This action came on for trial before the Court, the Honorable Roger G. Strand, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED that judgment be granted in favor of plaintiff United States of America and against defendants Lee H. and Goldie E. Rice in the principle sum of $11,491.64 together with interest thereon at the legal rate of 7.01% from the date of judgment until paid, and plaintiff's taxable costs.

IT IS FURTHER ORDERED AND ADJUDGED that defendants shall vacate the subject land and shall remove all of their property located thereon within 30 days after the filing of this order.

DATED at Phoenix, Arizona, this 14th day of April, 1988.

RICHARD M. WEARE, CLERK

By: /s/ Marci Groves
Deputy Clerk

F I L E D

JUL 03 1986

Richard H. Weare, Clerk
United States District Court
for the District of Arizona

By /s/
Deputy Clerk

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA, Plaintiff, vs. LEE H . RICE, et al., Defendants.	CIV 84-2330 PHX RGS O R D E R

The plaintiff, United States of America, has filed a Motion for Summary Judgment pursuant to Rule 56, Fed.R.Civ. Pro. In its complaint, the government seeks an ejectment of the defendants from the contested land, and monetary sums related to the restoration of the property and reasonable rental value

through February 9, 1985. The defendants, Rice, et al. (Rice), have responded denying the validity of plaintiff's claims for relief and have asserted counterclaims seeking damages.

This mineral contest has been adjudicated on two occasions by the Department of the Interior. Judicial review of such a mineral contest is suthorized under the Administrative Executive Procedure Act, 5 U.S.C. § 701 et seq. and is confined to the administrative record. If there is substantial evidence to support the findings of the agency, they must be affirmed. Benrickson v. Udall, 350 F.2d 949 (9th Cir. 1965). Further, such a determination presents an issue of law and is appropriately disposed of by a motion

for summary judgment. McCall v. Andrus, 628 F.2d 1185 (9th Cir. 1980), cert. denied, 450 U.S. 996 (1981); Dredge Corporation v. Penny, 338 F.2d 456 (9th Cir. 1964); Benrickson, supra.

Under both the "prudent man" and "marketability" tests, objective economic factors are the primary consideration in determining the validity of a mineral claim, not the subjective evaluations of a particularly individual. United States v. Coleman, 390 U.S. 599 (1968). The record shows that Rice, et al., failed to establish the validity of their mining claims, because they did not substantiate the discovery of a valuable mining deposit. Rice only produced approximately $1000.00 worth of gold and scheelite from the

contested claims during the nearly 30 years residency on the land. As a result, Rices' claims were declared invalid by a decision of Administrative Law Judge R.M. Steiner issued June 28, 1979. This decision was affirmed on appeal in a decision of the Interior Board of Land Appeals issued May 23, 1983 by Administrative Judge R.W. Mullen. This court's review of both the Administrative record and agency decision reveals that they were supported by substantial evidence and are in accordance with the law. The court therefore finds that the decision of the Interior Board of Land Appeals of the United States Department of the Interior issued May 23, 1983 is not arbitrary or capricious and is supportable by

by substantial evidence, and accordingly is affirmed in all respects.

The defendants' counterclaim is barred by the doctrine of sovereign immunity and the two-year statute of limitations. The doctrine of sovereign immunity precludes most counterclaims in the present type of action. See, United States v. Foresyth, 321 F.Supp. 761 (D. Colo. 1971); United States v. Noqueira, 403 F.2d 816 (9th cir. 1968). The claimant must demonstrate that the government has waived sovereign immunity to allow their claim or counterclaim, and that they have exhausted the administrative remedies available under 28 U.S.C. § 2675(a) before bringing such a counterclaim. No such showing has been made in the present case. The facts establish that the defendants' counterclaim is

barred by both the doctrine of sovereign immunity and the two year statute of limitations.

Accordingly,

IT IS ORDERED granting partial summary judgment in favor of plaintiff and against defendants for injunctive relief ejecting the defendants from the property within 60 days of the date of this judgment, and for the removal of any property of the defendants within this 60 day time period or said property should be deemed abandoned, with legal title being acquired by the government.

FURTHER ORDERED granting summary judgment in favor of the plaintiff and against defendants dismissing defendants' counterclaims against the United States of America.

Further, the court finds the

existence of material questions of fact with respect to plaintiff's claims for damages for the cost of restoration of the subject property and for the reasonable value thereof. Accordingly,

IT IS ORDERED denying plaintiff's motion for summary judgment on these claims, the same to be established upon trial of these issues which is hereby set for November 4, 1986, at 9:30 a.m..

DONE IN OPEN COURT this 1st day of July, 1986.

/s/ Roger G. Strand
HONORABLE ROGER G. STRAND
U.S. DISTRICT COURT JUDGE

F I L E D
MAY 22 1991

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA Plaintiff-Appellee, v. LEE H. RICE and GOLDIE E. RICE, Defendants-Appellants.	No. 90-16329 D.C. No. CV-84-2330-PHX-RGS ORDER

BEFORE: NORRIS, BEEZER, and BRUNETTI, Circuit Judges

Appellants' petition for rehearing is denied.

5 U.S.C.S. § 706. **Scope of review**

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) **hold unlawful and set aside agency action, findings, and conclusions found to be--**

(A) **arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;**

(B) **contrary to constitutional right, power, privilege, or immunity;**

(C) **in excess of statutory jurisdiction, authority, or**

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute or;

(F) unwarranted by the facts to the extent that the facts are

subject to a trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts cited by a party, and due account shall be taken of the rule of prejudicial error. (Emphasis added)

16 U.S.C. § 485. **Exchange of lands in national forest**

When the public interests will be benefitted thereby, the Secretary of Agriculture is authorized in his discretion to accept on behalf of the United States title to any lands within the exterior boundaries of the national forests which, in his opinion are chiefly valuable for national-forest purposes, and in exchange therefor may patent not to exceed an equal value of such national-forest land, in the same state, surveyed and **nonmineral in character,** or he may authorize the grantor to cut and remove an equal value of timber within the national forests of the same State; the values in each case to be determined by him. **Before any such exchange is effected, notice of the contemplated exchange reciting the lands involved shall be published once a week for four successive weeks in some newspaper of general circulation in the county or counties in which may be situated the lands to be accepted, and in some like newspaper published in any county in which may be situated any lands or timber to be given in exchange.** Timber given in such exchanges shall be cut and removed under the laws and regulations relating to the national forests, and under the direction and supervision and in accordance with the requirements of the Secretary of Agriculture. Lands conveyed to the United States under this section and section 486 of this title become parts of the national forest within whose boundaries they are located.

28 U.S.C. § 455. **Disqualification of justice, judge or magistrate**

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might be reasonably questioned...

30 U.S.C. § 26. **Locators' rights of possession and enjoyment.**

The locators of all mining locations made on any mineral vein, lode, or ledge, situated on the public domain, their heirs, and assigns, where no adverse claim existed on the 10th day of May 1872 so long as they comply with the laws of the United States, and with State, territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes and ledges throughout their entire depth, the top or apex of which lies inside of such surface lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins and ledges. Nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the verticle lines of his claims to enter upon the surface of a claim owned or possessed by another. (Emphasis added)

30 U.S.C. § 29. **Patents; procurement procedure; filing; application under oath**

A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of Title 43, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title, and section 661 of Title 43, may file in the proper land office an application for a patent, under oath, showing such compliance, together with a plat and field notes of the claim or claims in common, made by or under the direction of the Bureau of Land Management, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land office, upon the filing of such application, plat, field notes, notices, and affidavits, shall publish a notice

that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the Director of the Bureau of Land Management that $500 worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during during such period of publication. If no adverse claim shall have been filed with the register of the proper land office at the expiration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of $5 per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of sections 21, 22 to 24, 26 to 28, 29, 30, 33 to 48, 50 to 52, 71 to 76 of this title and section 661 of Title 43.

Where the claimant for a patent is not a resident of or within the land district wherein the vein, lode, ledge, or deposit sought to be patented is located, the application for patent and the affidavits required to be made in this section by the claimant for such patent made be made by his, her, or its authorized agent, where said agent is conversant with the facts sought to be established by said affidavits. (Emphasis added)

(R.S. § 2325; Jan.22, 1880, c. 9 § 1, 21 Stat. 61; Mar. 3, 1925, c. 462. 43 Stat. 1144, 1145; 1946 Reorg.Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

30 U.S.C. § 612. **Reservations in the United states to use of the surface and surface resources**

(b) Rights under any mining claim **hereafter** located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States, its permittees, and licensees, to use so much of the surface thereof as may be necessary for such purposes or for access to adjacent land; **Provided, however,** That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto; **Provided further,** That if at any time the locator requires more timber for his mining operation than is available to him from the claim after disposition of timber therefrom by the United States, subsequent to the location of the claim, he shall be entitled, free of charge, to be supplied with timber for such requirements from the nearest timber administered by the disposing agency which is ready for harvesting under the rules and regulations of that agency and which is substantially equivalent in kind and quantity to the timber estimated by the disposing agency to have been disposed

of from the claim: **Provided further,** that nothing in sections 601, 602, and 611 to 615 of this title shall be construed as affecting or intended to affect or in any way interfer with or modify the laws of the States which lie wholly or in part westward of the ninety-eighth meridian relating to the ownership, control, appropriation, use, and distribution of ground or surface waters within any unpatented mining claim.

July 23, 1955, c. 375, § 4.69 Stat. 368.

FILED

NOV 15 1989

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	) No. 88-2550
	)
Plaintiff-Appellee,	) D.C. No. CV-84
	) -2330-PHX-RGS
v.	)
	) ORDER
LEE H. RICE and GOLDIE E. RICE,	)
	)
Defendants-Appellants.	)
	)

BEFORE: NORRIS, BEEZER, AND BRUNETTI, Circuit Judges

Appellants' petition for rehearing is denied.

F I L E D

JUL 16 1991

CLERK, U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	)	No. 90-16329
	)	
Plaintiff-Appellee,	)	D.C. No. CV-84-2330-PHX-RG
	)	
v.	)	
	)	
LEE H. RICE and GOLDIE E. RICE	)	ORDER
	)	
Defendants-Appellants.	)	
	)	

BEFORE: BRUNETTI, Circuit Judge

Appellants' emergency motion for reconsideration of this court's June 14, 1991, order denying appellants' emergency motion for stay of mandate and for injunction and restraining order pending filing of petition for writ of certiorari and final decision of courts is DENIED.

1677-065

SEAL

OFFICIAL RECORDS OF
PINAL COUNTY RECORDER
KATHLEEN C. FELIX

DATE: 18MAY90 TIME: 1450
FEE: $8.00 $4.00 $.00
PAGES: 004
DOCKET: 1677 PAGE: 065
INSTRUMENT # 978163

Recorded at the request
of, and when recorded
please mail to:

Jeffrey A. Goldberg
KALISH, FORRESTER & TORRES P.C.
9002 N. Central, Suite 100
Phoenix, Arizona 85020

TRUSTEE'S DEED

Jeffrey A. Goldberg ("Trustee"), as the duly appointed Trustee of the Deed of Trust hereinafter described, does hereby grant and convey, but without covenant or warranty, express or implied, to Arizona Agricultural Credit Assn. ("Grantee"), the real property, situated in Pinal County, Arizona, and more particularly described as follows:

See Exhibit "A" attached hereto.

Trustee states that:

This conveyance is made pursuant to the powers, including the power of sale, conferred upon Trustee by the Deed of Trust dated March 3, 1987, made by Campbell Estates, Inc., an Arizona Corporation, as Trustor, and Arizona Farmers

Production Credit Association existing and operating under the provisions of the Farm Credit Act of 1971, and amendments thereto, now known as Arizona Agricultural Credit Association, a cooperative credit association, as Trustee and Beneficiary, and recorded on March 18, 1987, in the records of Pinal County, Arizona, in Docket 1429, Page 216-218. Jeffrey A. Goldberg was substituted as Trustee pursuant to a Notice of Substitution of Trustee recorded on January 17, 1990, in the records of Pinal County, Arizona, in Docket 1651, page 812.

Property was sold by the Trustee at public auction on May 18, 1990, at the place named in the Notice of Trustee's Sale, Grantees being the highest bidder at such sale became the purchaser of the Property and made payment therefor to the Trustee in the amount of the bid, $700,000.00, which payment was made entirely in cash, or by the satisfaction, pro tento, of the obligation then secured by the Deed of Trust, including the fees, costs and expenses relative to the sale.

/s/ Jeffrey A. Goldberg
Jeffrey A. Goldberg, Trustee

1677-066

STATE OF ARZONA)
)ss.
County of Pinal)

This instrument was acknowledged before me this 18th day of May, 1990, by Jeffrey A. Goldberg, Trustee.

1677-066

/s/ Dolores R. Potter
Notary Public

My Commission Expires:

April 18, 1993

SEAL

1677-067

"EXHIBIT A"

1. The Southeast Quarter of the Northeast Quarter (SE¼NE¼), Section Twenty-one (21), Township (10) South, Range (16) East of the Gila and Salt River Base and Meridian, Pinal County, ARizona. (PARCEL 1)

2. The Northeast Quarter of the Southeast Quarter (NE¼SE¼), Section Twenty-one (21), Township (10) South, Range (16) East of the Gila and Salt River Base and Meridian, Pinal County, Arizona. (PARCEL 2)

3. The Northwest Quarter of the Northwest Quarter (NW¼NW¼), Section Fifteen (15), Township (10) South, Range (17) West of the Gila and Salt River Base and Meridian, Pinal County, Arizona. (PARCEL 3)

4. The Southeast Quarter of the Southeast Quarter (SE¼SE¼), Section Eighteen

(18), Township (10) South, Range (17) East of the Gila and Salt River Base and Meridian, Pinal County, Arizona. (PARCEL 4)

5. The South One-Half of the Northeast Quarter (S½NE¼), Section Twenty-nine (29), Township (10) South, Range (17), East of the Gila and Salt River Base and Meridian, Pinal County, Arizona. (PARCEL 5).

TOGETHER WITH Lessee's interest in Grazing Lease No. 200 between State of Arizona and VY-73-C Ranch Corporation, an Arizona Corporation, Lessee, for a period ending March 29, 1982, dated March 30, 1972, assignment of Lease by VY-73-C Ranch corporation to Thelma M. Rowe, a single woman dated March 30, 1977; Assignment by Thelma M. Rowe, a single woman to Taylor & Taylor, a Partnership July 27, 1979.

FOREST SERVICE GRAZING PERMIT KNOWN AS AMERICAN FLAG GRAZING ALLOTMENT
Permit No. 05-5932